

PRE-APPEAL BRIEF REQUEST FOR REVIEW**(filed with the Notice of Appeal)**Docket Number
042933/269778Application Number
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Esteve Mede

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

Respectfully submitted,

Andrew T. Spence
Registration No. 45,699Date April 29, 2008**Customer No. 00826****ALSTON & BIRD LLP**

Bank of America Plaza

101 South Tryon Street, Suite 4000

Charlotte, NC 28280-4000

Tel Charlotte Office (704) 444-1000

Fax Charlotte Office (704) 444-1111

Attachment

Reasons for Requesting Pre-Appeal Brief Request For Review
(no more than five 5 pages may be provided)

REMARKS/ARGUMENTS

These remarks are hereby filed concurrent with a Pre-Appeal Brief Request for Review, following a final Official Action dated December 31, 2007, and an Advisory Action dated April 11, 2008. The present application includes pending Claims 1-36. Pending Claims 1-4, 10-13, 19-22 and 28-31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,223,291 to Puhl et al., in view of U.S. Patent No. 7,143,337 to Landsman et al. The remaining claims, namely Claims 5-9, 14-18, 23-27 and 32-36, stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Puhl in view of Landsman, and further in view of various combinations of U.S. Patent Application Publication No. 2004/0176080 to Chakravorty et al., and U.S. Patent Application Publication No. 2003/0147369 to Singh et al. As explained below, Applicants respectfully submit that the claimed invention is patentably distinct from Puhl, Landsman, Chakravorty and Singh, taken individually or in any proper combination. In view of the remarks presented herein, Applicants respectfully request reconsideration and withdrawal of the rejections of all of the pending claims.

A. Claims 1-4, 10-13, 19-22 and 28-31 are Patentable

Pending Claims 1-4, 10-13, 19-22 and 28-31 stand rejected as being unpatentable over Puhl in view of Landsman. As background, Puhl discloses a secure wireless electronic-commerce system that utilizes digital product certificates and digital license certificates. In the passage cited for disclosing aspects of the claimed invention, Puhl discloses a method of merchant (also referred to as an attribute authority – AA) delivering content to a client and receiving payment for that content. Initially, the merchant authenticates itself to the client by delivering a digital certificate to the client, which the client may verify via a certificate authority (CA). If the merchant is verified, the client delivers payment to the merchant for a content item, which the merchant then delivers to the client. As disclosed, the content item may comprise a software patch update, which may be delivered to the client without the user's consent or awareness of the update.

According to one aspect of the claimed invention, as reflected by independent Claim 1, a system is provided for downloading pushed content. As recited, the system includes a terminal comprising a processor configured to receive service loading content that identifies download content and has a digital signature. The processor is configured to authenticate the service loading content based upon the digital signature, and if the service loading content is authenticated, pull the download content to the terminal. In this regard, the processor is configured to authenticate the service loading content, and pull the download content, in response to receiving the service loading content and independent of interaction from a user of the terminal. The processor is further configured to determine if an interruption occurs in pulling the download content such that the terminal receives a portion but less than all of the download content, and if an interruption occurs in receiving the content, recover the download content including receiving a remaining portion of the download content without also receiving at least part of the previously received portion.

As explained in response to the final Official Action, in contrast to independent Claim 1, neither Puhl nor Landsman, taken individually or in any proper combination, teaches or suggests a terminal receiving service loading content, and in response thereto and without user interaction, authenticating the service loading content and pulling download content identified by the service loading content. The Official Action alleges that Puhl discloses the aforementioned features. Applicants note, however, that nowhere does Puhl disclose a terminal receiving service loading content that identifies download content, and also has a digital signature that is authenticated before the terminal pulls the download content. In the passage of Puhl cited in the Official Action, for example, the client may receive a digital signature of a merchant to verify the merchant before paying for, and receiving, a content item from that merchant. In Puhl, however, the client does not receive the merchant's digital signature in service loading content that also identifies download content that is pulled by the client in response to receiving the service loading content and without user interaction (i.e., independent of interaction from a user), similar to independent Claim 1.

In another passage of Puhl cited in the Official Action, software on the client may be updated or upgraded without the user being aware of the upgrade, and without the user's consent. Even considering this passage, however, Puhl still does not teach or suggest that its client "pulls" download content in response to receiving service loading content (identifying the download

content and including a digital signature) and without user interaction, as per independent Claim 1. Notably, the Official Action cites separate features of Puhl for allegedly corresponding to the recited terminal receiving service loading content and pulling content in response thereto.

Nowhere has the Official Action cited or otherwise provided a coherent explanation of how Puhl supposedly teaches or suggests any manner by which its disclosed client receives service loading content and responds thereto in a manner satisfying independent Claim 1.

In response to the foregoing, the Advisory Action first asserts that the claims of the present application fail to recite that the service loading content authentication and pulling of download content “without user interaction,” which is argued to patentably distinguish the claims from the cited references. Applicants respectfully disagree, however, and note that independent Claim 1 (and similarly independent Claims 10 and 19) explicitly recites that “the processor is configured to authenticate the service loading content, and pull the download content, in response to receiving the service loading content and independent of interaction from a user of the terminal [i.e., without terminal-user interaction].”

Even further, the Advisory Action continues to cite the passage of Puhl related to updating or upgrading software without user awareness, but now further cites a passage whereby Puhl discloses a user being instructed how to enable the phone to begin a download. As explained above, however, even given Puhl disclosing updating/upgrading content without user awareness, Puhl still fails to teach or suggest pulling download content in response to receiving service loading content and without user interaction. To the extent that the Advisory Action cites the user being instructed to enable the phone to begin a download, Applicants note that this feature is explicitly disclosed as an alternative (“Another option”) to the user being unaware of an upgrade. This fact is even further illustrated by the fact that “the user is instructed to enable the phone,” – thereby precluding a content pull without user interaction.

Applicants therefore respectfully submit that independent Claim 1, and by dependency Claims 2-9, is patentably distinct from Puhl and Landsman, taken individually or in any proper combination. Applicants also respectfully submit that independent Claims 10, 19 and 28 recite subject matter similar to that of independent Claim 1, including at least the service-loading content and download-recovery features. Thus, Applicants also respectfully submit that independent Claims 10, 19 and 28, and by dependency Claims 11-18, 20-27 and 29-36, are

patentably distinct from Puhl and Landsman, taken individually or in any proper combination, for reasons similar to those provided above with respect to independent Claim 1.

1. Claims 4, 13, 22 and 31

In addition to the foregoing, Applicants respectfully submit that various ones of dependent Claims 2-9, 11-18, 20-27 and 29-36 recite features further patentably distinct from Puhl and Landsman, taken individually or in any proper combination. For example, among other recitations, Claims 4, 13, 22 and 31 recite that the service loading content identifies an origin server associated with the download content, and that the terminal is configured to request and receive the download content from the origin server when the service loading content is authenticated.

The final Official Action alleged that Puhl discloses the features of Claims 4, 13, 22 and 31, but perplexedly appears to cite Applicant's application in support of this assertion. That is, in alleging that Puhl discloses service loading content identifying the origin server associated therewith, the Official Action cites "para. 0009 of the background of the applicant invention." Official Action of Dec. 31, 2007, page 5. To the extent the final Official Action intended to cite paragraph 0009 of the background of Puhl, Applicants note that the background section of Puhl does not have nine paragraphs or otherwise refer to any of the paragraphs of its background section as being the ninth paragraph. To the extent that the final Official Action did in fact intend to cite the background section of Applicants application as supposedly disclosing the aforementioned feature, Applicants respectfully submit that the Office has not met its burden of not only citing prior art disclosing every element of the claimed invention, but also providing an apparent reason to combine this feature with those allegedly disclosed by Puhl and Landsman to teach the claimed invention. *See KSR Int'l. Co. v. Teleflex, Inc.*, 127 S.Ct. 1727, 1740-41, 82 USPQ2d (BNA) 1385, 1396 (2007) (obviousness often requires determining whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue, and that to facilitate review, this analysis should be made explicit). At a minimum, however, Applicants submit that the ambiguity in the citation to a claimed feature attributed to Puhl affects Applicants' ability to effectively reply to the final Official Action. *See* MPEP § 710.06.

B. Claims 5-9, 14-18, 23-27 and 32-36 are Patentable

Pending Claims 5-9, 14-18, 23-27 and 32-36 stand rejected as being unpatentable over Puhl in view of Landsman, and further in view of various combinations of Chakravorty and Singh. As explained above, independent Claims 1, 10, 19 and 28, and by dependency Claims 2-9, 11-18, 20-27 and 29-36, are patentably distinct from Puhl and Landsman, taken individually or in any proper combination. Applicants respectfully submit that neither Chakravorty nor Singh, taken individually or in combination, cures the deficiencies of Puhl and Landsman. That is, even considering Chakravorty and Singh, none of Puhl, Landsman, Chakravorty or Singh, taken individually or in combination, teaches or suggests the aforementioned service-loading content and download-recovery features, as recited by the claimed invention. And there is no apparent reason for the combination of Puhl, Landsman, Chakravorty and/or Singh to disclose the claimed invention. Thus, for at least the reasons given above with respect to independent Claims 1, 10, 19 and 28, Claims 5-9, 14-18, 23-27 and 32-36 are also patentably distinct from Puhl in view of various combinations of Chakravorty and Singh.

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